

ORIGINAL

ORAL ARGUMENT REQUESTED**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

SENISTECH INC. AND DONALD W. BERRIAN,	Case No. 04-11483MLW
Plaintiff,	
v.	DEFENDANTS' MOTION TO DISMISS, OR, IN THE ALTERNATIVE, TO TRANSFER VENUE
TIME 'N TEMPERATURE COMPANY, d/b/a TIME 'N TEMPERATURE CORPORATION	
Defendant.	

Defendant Time 'N Temperature Company ("Time 'N Temperature") hereby moves this Court for an order dismissing this case for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) and for improper venue pursuant to 28 U.S.C. § 1406(a) and Fed. R. Civ. P. 12(b)(3). In the alternative, Time 'N Temperature hereby moves this Court for an order transferring this case to the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1404(a).

This Motion is made on the grounds that Time 'N Temperature lacks sufficient minimum contacts with the Commonwealth of Massachusetts such that this Court cannot exercise personal jurisdiction over it without offending traditional notions of fair play and substantial justice. Time 'N Temperature is a California corporation that does not have employees, agents, offices, telephone numbers, property, bank accounts, or warehouses in the State of Massachusetts. Moreover, Time 'N Temperature does not interject goods

into the stream of commerce through any established distribution channel, wherein such goods are directed towards Massachusetts. Time 'N Temperature's de minimis sales in Massachusetts are the result of infrequent and irregular occurrences. Because this Court does not have personal jurisdiction over Time 'N Temperature, venue is not proper in this District. Therefore, this case should be dismissed outright, or alternatively, transferred to the United States District Court for the Central District of California for the convenience of the parties and likely witnesses and in the interest of justice.

This motion is based upon the accompanying Memorandum of Points and Authorities In Support of Defendant's Motion To Dismiss, Or, In The Alternative, To Transfer Venue and the Declaration of Budd T. Pohle submitted concurrently herewith, as well as all pleadings and papers on file in this action, and upon such other evidence and oral argument as the Court may entertain at the time of the hearing.

REQUEST FOR ORAL ARGUMENT

Defendant requests oral argument on this Motion pursuant to Local Rule 7.1(D).

LOCAL RULE 7.1(A)(2) CERTIFICATION

Counsel for Defendant hereby certifies that he conferred with plaintiff's counsel by telephone on August 9, 2004 and attempted in good faith to resolve or narrow the issues raised in this Motion. This attempt was not unsuccessful.

Respectfully submitted,

CESARI AND McKENNA, LLP

Dated: August 9, 2004


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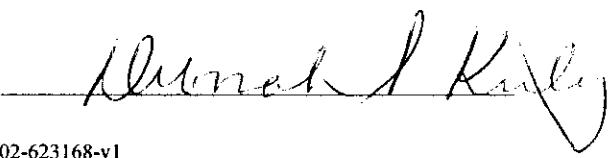
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Defendant's Motion to Dismiss, Or, In the Alternative, to Transfer Venue is being deposited with the United States Postal Service on August 9, 2004, in an envelope addressed to counsel for plaintiff, Sensitech Inc. and Donald W. Berrian:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SENSITECH INC. AND DONALD W.)
BERRIAN)
Plaintiff,)
v.) Civil Action No. 04-11483 (MLW)
TIME & TEMPERATURE COMPANY,)
d/b/a TIME 'N TEMPERATURE)
CORPORATION)
Defendant.)

)

[PROPOSED] ORDER

This Court, having considered the parties' briefings and arguments on Defendant's Motion to Dismiss, Or, in the Alternative To Transfer Venue, and for good cause shown, hereby orders that:

Alternative A

this action be and hereby is dismissed for lack of personal jurisdiction over the Defendant and improper venue.

Alternative B

this action be and hereby is transferred to the U.S. District Court for the Central District of California pursuant to 28 U.S.C. § 1404(a).

Date

Honorable Mark L. Wolf
U.S. District Judge